

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN SHOLL, II,  
Petitioner,  
v.  
MATTHEW ATCHLEY, WARDEN,  
Respondent.

No. 2:21-cv-0064 KJM AC P

ORDER

Respondent's motion to dismiss and petitioner's motion to strike restitution are both pending before the court. ECF Nos. 17, 23. The motion to dismiss was filed in August 2021.

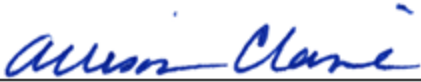
In the motion to dismiss, respondent sought abstention under Younger v. Harris, 401 U.S. 37 (1971), on the grounds that petitioner's criminal proceedings on remand from the California Court of Appeal were ongoing in the superior court. ECF No. 17 at 1-3.

In December 2021, the magistrate judge previously assigned to this case ordered respondent to notify the court if the state court proceedings concluded before findings were made on the instant motion to dismiss. ECF No. 24. There has been no such notification. Because some time has passed since respondent's representations regarding the status of the criminal case, and the applicability of Younger turns on the pendency of state criminal proceedings, respondent will be directed to file a status report.

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1 Accordingly, IT IS HEREBY ORDERED that respondent shall, within seven days from  
2 the date of this order, inform the court of the status of petitioner's Sacramento County Superior  
3 Court criminal case number 15F04686 on remand, and whether he stands by his assertion that  
4 Younger abstention applies. Additional briefing of the issue is neither required nor authorized.

5 DATED: March 7, 2023

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7 ALLISON CLAIRE  
8 UNITED STATES MAGISTRATE JUDGE  
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